IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:10CV75-03-MU

BILLY RAY LOCKLEAR,)	
Plaintiff,)	
V.)	
BOYD BENNETT, et al.,)	<u>L</u>
Defendants.)	
)	

THIS MATTER is before this Court on Plaintiff's "Motion for Juror Trial" in which he requests that he be permitted to voluntarily dismiss his case and two other cases from other districts¹ until his release from prison and in the alternative, that his motion be construed as a notice of appeal. (Doc. No. 30).

Plaintiff filed a pro se Complaint pursuant to 42 U.S.C. §1983 on March 29, 2010. (Doc. No. 1). By Order dated April 19, 2010, this Court dismissed Plaintiff's Complaint without prejudice for failure to exhaust his administrative remedies, (Doc. No. 7), and Plaintiff appealed. By Order dated February 2, 2011, the Fourth Circuit Court of Appeals vacated this Court's Order and remanded the case for further proceedings based on the fact that Plaintiff represented that he had not fully exhausted only one of his claims. (Doc. No. 15). In response, on March 3, 2011, this Court directed Plaintiff to delineate and list his specific claims in his Complaint, as they were far from clear, and also directed Plaintiff to identify which one of his claims contained in

¹ This Court will only consider Plaintiff's motion with respect to the case filed in this district.

his Complaint was not fully exhausted. (Doc. No. 18). The Court directed that Plaintiff comply with the Court's Order within twenty (20 days). On March 16, 2011. Plaintiff filed a Motion for the Appointment of Counsel. (Doc. No. 20). The Court denied Plaintiff's motion and specifically reminded Plaintiff that pursuant to this Court's March 3, 2011, he is required to identify which one of the claims in his Complaint was not exhausted. (Doc. No. 21). Plaintiff filed a Notice of Appeal of this Court's Order denying him counsel, but failed to file a document responsive to the Court's March 3, 2011 and March 23, 2011 Orders. By Order dated June 1, 2011, the undersigned dismissed Plaintiff's Complaint for failure to obey a court order pursuant to Federal Rule of Civil Procedure 41(b). (Doc. No. 28).

Because the Court has already dismissed Plaintiff's Complaint for failure to obey a Court Order, the Court cannot now allow Petitioner to voluntarily dismiss his case. Indeed, Plaintiff's case is now closed and the Court is without jurisdiction to order the relief Plaintiff has requested. However, Petitioner has also requested that his motion be construed as a Notice of Appeal if this Court was unable to grant his request for a voluntary dismissal. Therefore, Petitioner's motion will be construed as a Notice of Appeal.

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff's filing captioned as a "Motion for Juror Trial" (Doc. No. 30) be construed as a Notice of Appeal and forwarded to the Fourth Circuit Court of Appeals for consideration.

SO ORDERED.

Signed: June 27, 2011

Graham C. Mullen United States District Judge